

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

DTM WALNUT CREEK, INC. d/b/a
DT MANAGEMENT¹

Employer

and

Case 4–RC–21602

PHILADELPHIA JOINT BOARD,
WORKERS UNITED, an affiliate of
SEIU²

Petitioner

REGIONAL DIRECTOR’S DECISION AND ORDER

The Employer, DT Management, operates a 435 room hotel in Philadelphia, Pennsylvania called the Doubletree Hotel Philadelphia. The hotel is managed by the Hilton Hotels Corporation (Hilton). The Petitioner, Philadelphia Joint Board, Workers United, seeks to represent a unit of housekeeping, laundry, and food and beverage employees at the hotel. The Employer contends that the petition should be dismissed because the Petitioner and Hilton are parties to an agreement under which the Petitioner agreed not to organize employees at the hotel. The Petitioner takes the position that it is not bound by the agreement because it was entered into by a labor organization, UNITE HERE, with which it is not currently affiliated. The parties also disagree over the supervisory status and unit placement of various job classifications.

A Hearing Officer of the Board held a hearing,³ and the Petitioner and the Employer filed briefs. I have considered the evidence and the arguments presented by the parties, and, as discussed below, I have concluded that the agreement restricting organizing bars an election. Accordingly, I am dismissing the petition. Because the petition is being dismissed, this Decision will not resolve the supervisory and unit placement issues raised by the parties.

¹ The Employer’s name appears as amended at the hearing.

² The Petitioner’s name appears as amended at the hearing.

³ The record is unclear as to whether the Employer’s Exhibit 2 was received into evidence. Subsequent to the hearing, the parties agreed that it should be included and it was made part of the record.

In this Decision, I will first review the factors that must be evaluated to determine whether an agreement restricting organizing bars processing of the petition. Next, I will present the relevant facts. Finally, I will set forth my legal analysis and conclusions.

I. FACTORS RELEVANT TO DETERMINING WHETHER THE AGREEMENT RESTRICTING ORGANIZING BARS THE PETITION

Where a union has entered into an agreement to refrain from representing certain categories of employees for specified limited periods, the Board will not process a petition seeking to represent the covered employees during the term of the agreement. *Briggs Indiana Corp.*, 63 NLRB 1270 (1945). The refusal to process a petition in these circumstances “rests on the notion that a party should be held to its express promise.” *Lexington House*, 328 NLRB 894, 896 (1999).

An agreement to refrain from representing employees must be explicit. The Board will not infer such an agreement from the mere exclusion of groups of employees from a contractual unit or dismiss a petition on the basis of an alleged unwritten understanding of the parties during negotiations. *Cessna Aircraft Co.*, 123 NLRB 855, 857 (1959). However, a restriction on organizing need not be included in a collective-bargaining agreement to be enforceable. As long as the promise is clear, the union will be bound. *Lexington House*, above. See also *Verizon Information Systems*, 335 NLRB 558 (2001).

An agreement by an international union restricting organizing will bind any local affiliates of the international. Similarly, an agreement by a local union will bind any other local affiliates of the same international union. *Cessna Aircraft Co.*, above at 857.

II. FACTS

The Petitioner has been in existence since the 1920s. It was originally affiliated with the Amalgamated Clothing and Textile Workers Union (ACTWU). In 1995, the ACTWU merged with the International Ladies Garment Workers Union to form the Union of Needletrades, Industrial and Textile Employees (UNITE), and the Petitioner became a UNITE affiliate. Then, in 2004 UNITE merged with the Hotel Employees and Restaurant Employees Union (HERE) to create UNITE HERE. Between 2004 and March 2009, the Petitioner was a UNITE HERE affiliate.

In March 2009, the Petitioner chose to disaffiliate from UNITE HERE and to affiliate with Workers United.⁴ UNITE HERE thereafter revoked the Petitioner’s charter. The Petitioner

⁴ There may be a dispute over whether the Petitioner’s disaffiliation is valid. It is unnecessary to resolve this issue, or to delay this Decision until the matter is resolved in other forums, because the Petitioner is bound to its 2006 agreement to refrain from organizing the Employer’s employees regardless of its current affiliation.

currently claims to represent the same employees it represented while it was a UNITE HERE affiliate. In pleadings which it filed in a federal court lawsuit over the effects of its departure from UNITE HERE, the Petitioner has taken the position that it is an independent organization which has had a separate existence throughout its various affiliations.

Lynne Fox is the Petitioner's Manager and has served in that position since 1999. During the period in which the Petitioner was indisputably affiliated with UNITE HERE, Fox served as a UNITE HERE Vice President. Bruce Raynor was the General President of UNITE HERE between 2004 and 2009 and is currently the President of Workers United.

In July 2006, Hilton entered into an agreement with "UNITE HERE on its own behalf and any local affiliate thereof." As part of this agreement, Hilton agreed to resolve certain contract disputes with UNITE HERE affiliates and to grant card-check recognition at specified Hilton properties in New York, Chicago, Hawaii, Los Angeles, Puerto Rico, San Francisco and Toronto. In return, UNITE HERE and its affiliates agreed not to "organize and/or represent any other employees at hotels owned or managed by Hilton or any of its subsidiaries..." for a period of five years. The agreement was modified in 2008, *inter alia*, to require Hilton to grant card-check recognition at properties in Seattle and Portland. Raynor signed both the 2006 and 2008 agreements on behalf of UNITE HERE.⁵

III. ANALYSIS

The Employer contends that the Petitioner is bound by the 2006 agreement and barred as a result from seeking to organize the Employer's employees. The 2006 agreement on its face indicates that both UNITE HERE and its local affiliates are parties. Because the Petitioner was a UNITE HERE affiliate in 2006, it was a party to, and bound by, the agreement.

The agreement precludes the Petitioner from organizing and representing employees at Hilton-managed properties except in certain specified geographic areas. The Employer is a Hilton-managed property, and Philadelphia is not an area in which organizing is allowed. Thus, the agreement expressly bars organizing the Employer's employees. As a party to the agreement, the Petitioner is bound by this ban, and the ban extends for a limited period of five years. Because the Board enforces express agreements to refrain from organizing for limited periods, it would be inappropriate to process the petition in this case.

The Petitioner contends that it should not be bound by the 2006 agreement because it did not sign it and is no longer affiliated with the signatory, UNITE HERE. This contention ignores the Board rule that affiliates are bound to agreements restricting organizing entered into by their internationals. *Cessna Aircraft Co.*, above at 857. UNITE HERE signed the agreement, and, since the Petitioner was a UNITE HERE affiliate at the time of execution, it is required to abide by it.

⁵ John Wilhelm, President/Hospitality Industry of UNITE HERE, also signed the 2006 and 2008 agreements on behalf of that organization.

The Petitioner's argument also ignores the plain language of the 2006 agreement which states that both UNITE HERE and its local affiliates such as the Petitioner are parties. By this language, the Petitioner is bound to the agreement on its own behalf and not merely because of its relationship with UNITE HERE. Disaffiliation cannot cancel the Petitioner's obligation to honor agreements to which it is directly bound.⁶

The Petitioner further asserts that it should not be obligated to honor the restrictions on organizing contained in the 2006 agreement because it has not taken advantage of the portions of the agreement requiring Hilton to grant card-check recognition in certain locations and thus received no benefit from the agreement. This argument, too, is without merit. Since the 2006 agreement did not provide for card-check recognition in Philadelphia, where the Petitioner is based, it is hardly surprising that the Petitioner has not benefited directly from those portions of the 2006 agreement which facilitate organizing. In any case, the Petitioner was part of UNITE HERE at the time the 2006 agreement was signed, and UNITE HERE and some of its affiliates secured favorable terms from Hilton in return for the Petitioner's agreement to refrain from organizing.

Additionally, it would be unfair to Hilton to allow the Petitioner to avoid its promise not to organize the hotels that it manages. By agreeing to card-check recognition at various locations, among other things, Hilton gave valuable consideration in order to secure promises from the Petitioner and other UNITE HERE affiliates to limit organizing at other locations. Hilton will have been deprived of a significant portion of the benefit of its bargain if the Petitioner, as a result of a purported disaffiliation in which Hilton played no part, is permitted to avoid its promise. Accordingly, the petition shall be dismissed.

IV. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and for the reasons set forth above, I conclude and find as follows:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner is a labor organization that claims to represent certain employees of the Employer.

⁶ The Petitioner suggests that, if it is deemed bound by the 2006 agreement, UNITE HERE might indefinitely limit its ability to organize by simply extending the agreement. However, the fact that the Petitioner may be bound to agreements it entered into while it was an affiliate of UNITE HERE does not mean that UNITE HERE retains the right to bind the Petitioner if it is no longer an affiliate.

4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

V. ORDER

IT IS HEREBY ORDERED that the petition be, and it hereby is, dismissed.

VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. A copy of the request for review must be served on each of the other parties to the proceeding, and with the Regional Director, either by mail or by electronic filing. This request must be received by the Board in Washington by **Friday, December 18, 2009**. The request may be filed electronically through E-Gov on the Agency's website, www.nlr.gov,⁷ but **may not** be filed by facsimile.

Signed: December 4, 2009

at Philadelphia, PA

/s/ [Dorothy L. Moore-Duncan]

DOROTHY L. MOORE-DUNCAN

Regional Director, Region Four
National Labor Relations Board

⁷ To file the request for review electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the E-filing link on the menu and follow the detailed instructions. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Agency's website www.nlr.gov.